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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,780	08/06/2003	Aurelie Chaix	P24002	7632
7055	7590	03/11/2005		EXAMINER
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/634,780	CHAIX ET AL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gloria Hale	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on Amendment and IDS of 12-6-04.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-3,5-17 and 19-21 is/are rejected.
- 7) Claim(s) 4,18 and 22-27 are is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 06 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-6-04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3 there is no antecedent basis for "said yoke". Claim 9 cannot depend from a subsequent claim and therefore it is not clear as to which claim it depends from. However, the claims as best understood have been examined on their merits.

### ***Claim Objections***

Claims 10,11,17 and 21-27 are objected to because of the following informalities: There is no support in the specification for the recitation that the "material is different" from the abrasion resistant material. Claim 17 states that the sleeves are made of different material yet there is no support in the specification for this recitation. The specification states that the material of the sleeves is preferably the same material. There is no support in the specification for the arm/sleeves as being of an antibacterially treated fabric as in claims 20,21 and 24. There is no support in the specification that the "sleeves are distinct". In claim 22, line 5 it appears that language is missing after "second section". Appropriate correction is required. Claims 23 a d 25-27 depend from claim 22 and are objected to for the same reasons as claim 22.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3,5,6, 8-17 and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Newman (US 5,210,877).

In regard to claims 1-3,5,6,8-17 and 19-21 Newman discloses a garment with a section of woven abrasion resistant material at the back and shoulder (See figure 2, areas 6-8;col. 2, lines 9-35 and 37-40 and col. 4, lines 28-32). The material of Newman is polyethylene, which is highly aerated and is antibacterial since it would not hold moisture and breed bacteria. Newman discloses the material as also being polyester. The abrasion resistant material of Newman covers a majority of the back as broadly claimed as seen in the figures. Newman's sleeves are not entirely made of the abrasion resistant material and therefore it can be said that they are not wholly made of the abrasion resistant material.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by the micro fiber polyester fleece River Guide Shirt as seen in the Early Winters catalog.

The River guide shirt is a polyester fleece shirt that is inherently antibacterial and is a garment for the upper body which protects the wearer as broadly claimed and which includes a section made of abrasion resistant material and it covers a majority of the back of the wearer and over the shoulders. Such polyester fleece is extensible in at

least one direction and woven. (See The Early Winters Catalog, page 34, the River Guide Shirt). The present claims do not claim the areas as having different material areas.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Newman (US 5,210,877) in view of Orima (US 6,374,643).

Newman discloses the invention substantially as claimed with the abrasion resistant material forming the garment including polyethylene which is inherently breathable, antibacterial to the degree as claimed and highly aerated as broadly claimed since they do not hold moisture and bacteria. However, Newman does not specifically disclose the use of an antibacterial silver yarn material to prevent bacteria from forming on the material. Orima discloses such a material (See Orima, col. 1, lines 13-20; col. 2, lines

Art Unit: 3765

11-19 and 64-67), which discloses the silver yarn and "X-static" material used in garments for its antibacterial properties. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the garment of Newman with the teaching of Orima to use any known material such as silver yarns to construct the garment in order to utilize the known benefits of such a silver yarn such as its antibacterial properties especially in athletic type garments where perspiration usually occurs. Adding the silver yarns to the polyethylene material which is already antibacterial to a degree would further the antibacterial properties of the garment.

Claims 4 and 18 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4 and 18 claim a hydrophilic treatment, which is not disclosed by the cited references.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Tues.-Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gloria Hale  
Primary Examiner  
Art Unit 3765

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